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Department of Health

KATHY HOCHUL
Governor

JAMES V. McDONALD, M.D., M.P.H.
Commissioner

JOHANNE E. MORNE, M.S.
Acting Executive Deputy Commissioner

October 13, 2023

CERTIFIED MAIL/RETURN RECEIPT

██████████
c/o The Riverside Premier Rehabilitation
and Healing Center
150 Riverside Drive
New York, New York 10024

Allison Bellin, DSW
The Riverside Premier Rehabilitation
and Healing Center
150 Riverside Drive
New York, New York 10024

RE: In the Matter of ██████████ ██████████ – Discharge Appeal

Dear Parties:

Enclosed please find the Decision After Hearing in the above referenced matter. This Decision is final and binding.

The party who did not prevail in this hearing may appeal to the courts pursuant to the provisions of Article 78 of the Civil Practice Law and Rules. If the party wishes to appeal this decision it may seek advice from the legal resources available (e.g. their attorney, the County Bar Association, Legal Aid, etc.). Such an appeal must be commenced within four (4) months from the date of this Decision.

Sincerely,

Natalie J. Bordeaux
Chief Administrative Law Judge
Bureau of Adjudication

NJB: cmg
Enclosure

STATE OF NEW YORK
DEPARTMENT OF HEALTH

COPY

In the Matter of an Appeal, pursuant to
10 NYCRR 415.3, by

██████████ ██████████

Appellant,

DECISION

DA23-6166

from a determination by

THE RIVERSIDE

to discharge him from a residential health care facility.

Before: Tina M. Champion
Administrative Law Judge

Held at: Videoconference via WebEx

Date: October 10, 2023

Parties: ██████████ ██████████
The Riverside Premier Rehabilitation & Healing Center
150 Riverside Drive
New York, New York 10024
By: Pro Se

The Riverside Premier Rehabilitation & Healing Center
150 Riverside Drive
New York, New York 10024
By: Allison Bellin, Director of Social Work

JURISDICTION

By notice dated [REDACTED] 2023, The Riverside Premier Rehabilitation & Healing Center (Facility), a residential care facility subject to Article 28 of the New York Public Health Law (PHL), determined to discharge [REDACTED] (the Appellant) from the Facility. The Appellant appealed the discharge determination to the New York State Department of Health (the Department) pursuant to 10 New York Codes, Rules, and Regulations (NYCRR) 415.3(i).

The hearing was held in accordance with the PHL; Part 415 of 10 NYCRR; Part 483 of the United States Code of Federal Regulations (CFR); the New York State Administrative Procedure Act (SAPA); and Part 51 of 10 NYCRR.

Evidence was received and witnesses were examined. A digital recording was made of the proceeding.

HEARING RECORD

ALJ Exhibits:	I – Letter with Notice of Hearing and Notice of Discharge or Transfer II – Rescheduling Letter
Facility Exhibits:	1 – Physician Progress Notes 2 – Physical Therapy Discharge Summary
Appellant Exhibits: ¹	A – Editorial on COVID-19 and Obesity, August 2020 B – Obesity Reviews Journal Article, July 2020
Facility Witnesses:	Alana Pantale, Assistant Director of Rehabilitation Faye Aguillon, Nurse Manager Alvan Bambury, Social Worker
Appellant Witness:	[REDACTED] Appellant

¹ The hearing record was held open until 12:00 p.m. on October 10, 2023, approximately one hour after conclusion of the hearing, for the Appellant to submit up to two articles regarding [REDACTED] and COVID-19. Appellants' Exhibits A and B were timely received, entered into evidence, and the record closed. No subsequent correspondence was considered in the rendering of this Decision.

FINDINGS OF FACT

1. The Appellant is a [REDACTED]-year-old male who was admitted to the Facility on [REDACTED] 2023, for short-term rehabilitation with diagnoses including [REDACTED] and pain. (Exhibit [Ex.] 1.)

2. The Appellant received physical therapy (PT) at the Facility from [REDACTED], 2023, through [REDACTED] 2023. The Appellant was discharged from PT for having achieved the highest practical level. (Facility Ex. 2.)

3. The Appellant is able to ambulate independently, with no physical assistance, for a minimum of [REDACTED] feet. The Appellant is also independent with his activities of daily living (ADL). (Ex. 2; Testimony [T.] Pantale.)

4. The Appellant is prescribed [REDACTED] for pain management. (T. Aguillon.)

5. The Appellant has no skilled nursing needs. (T. Aguillon.)

6. On [REDACTED], 2023, the Facility issued a Notice of Discharge or Transfer to the Appellant which proposed discharge to [REDACTED], an assisted living facility in [REDACTED] New York. (ALJ Ex. 1.)

7. The Notice of Discharge or Transfer states that the Appellant will be transferred because the Appellant's health has improved sufficiently such that the Appellant no longer requires the services of the facility. (ALJ Ex. 1.)

8. The Appellant timely appealed the Facility's discharge determination and proposed discharge location.

9. The Appellant has remained at the Facility during the pendency of the appeal.

ISSUES

Has the Facility established that its determination to discharge the Appellant is correct and that its discharge plan is appropriate?

APPLICABLE LAW

A residential health care facility, also referred to in the Department of Health Rules and Regulations as a nursing home, is a facility which provides regular nursing, medical, rehabilitative, and professional services to residents who do not require hospitalization. (PHL § 2801[2][3]; 10 NYCRR 415.2[k].)

A resident may only be discharged pursuant to specific provisions of the Department of Health Rules and Regulations. (10 NYCRR 415.3[i][1].)

The Facility alleged that the Appellant's discharge is permissible pursuant to 10 NYCRR 415(i)(1)(i)(a)(2), which states:

The transfer or discharge is appropriate because the resident's health has improved sufficiently so the resident no longer needs the services provided by the Facility.

A Facility must ensure complete documentation in the resident's clinical record when a resident is discharged. (10 NYCRR 415.3[i][1][ii].)

Facilities are required to provide written notice of transfer or discharge that includes the following:

- (a) The reason for transfer or discharge;
- (b) The specific regulations that support, or the change in Federal or State law that requires, the action;
- (c) The effective date of transfer or discharge;
- (d) The location to which the resident will be transferred or discharged;
- (e) A statement that the resident has the right to appeal the action to the State Department of Health, which includes:

- (1) an explanation of the individual's right to request an evidentiary hearing appealing the decision;
- (2) the method by which an appeal may be obtained;
- (3) in cases of an action based on a change in law, an explanation of the circumstances under which an appeal will be granted;
- (4) an explanation that the resident may remain in the facility (except in cases of imminent danger) pending the appeal decision if the request for an appeal is made within 15 days of the date the resident received the notice of transfer/discharge;
- (5) in cases of residents discharged/transferred due to imminent danger, a statement that the resident may return to the first available bed if he or she prevails at the hearing on appeal; and
- (6) a statement that the resident may represent him or herself or use legal counsel, a relative, a friend, or other spokesman;

(f) the name, address and telephone number of the State long term care ombudsman;

(g) for nursing facility residents with developmental disabilities, the mailing address and telephone number of the agency responsible for the protection and advocacy of developmentally disabled individuals established under Part C of the Developmental Disabilities Assistance and Bill of Rights Act;

(h) for nursing facility residents who are mentally ill, the mailing address and telephone number of the agency responsible for the protection and advocacy of mentally ill individuals established under the Protection and Advocacy for Mentally Ill Individuals Act.

(10 NYCRR 415.3[i][1][v].)

Facilities are also required to "provide sufficient preparation and orientation to residents to ensure safe and orderly transfer or discharge from the facility in the form of a discharge plan which addresses the medical needs of the resident and how these will be met after discharge."

(10 NYCRR 415.3[i][1][vi].)

Under the hearing procedures at 10 NYCRR 415.3(i)(2)(iii), the Facility bears the burden to prove a discharge is necessary and appropriate.

DISCUSSION

The Appellant is a [REDACTED]-year-old male who was admitted to the Facility on [REDACTED] 2023. He received PT during his stay. The Appellant's PT was discontinued on [REDACTED] 2023 after he was determined to have achieved his highest practical level of functioning and independence with mobility and ADLs. Alana Pantale, Assistant Director of Rehabilitation, and Faye Aguillon, Nurse Manager, testified that the Appellant has been observed to be independent with his ambulation/mobility and ADLs. Ms. Aguillon testified that the Appellant left the Facility on pass for two consecutive days to attend a symposium without an escort or any assistive devices, and that he returned with no report of falls. The Facility offered into evidence documentation by Facility physician Jared Tannenbaum, M.D., stating that he agrees "with therapy staff, administration, nursing staff, and primary MD that the [Appellant] is safe for discharge from the facility and has no medical or rehab goals." (Facility Ex. 1.)

The Appellant disputes that discharge is appropriate. He testified that he has [REDACTED] pain which prevents him from exercising and being able to decrease his weight. He testified that his body mass index (BMI), particularly with his composition of [REDACTED] [REDACTED] and places him at a high risk of a severe outcome if he were to get COVID-19. The Appellant offered into evidence a 2020 editorial and a 2020 journal article discussing [REDACTED] as a risk factor for negative outcomes with COVID-19 infection. (Appellant Exs. A & B.) The Appellant expressed having great fear of getting COVID-19 in the community while engaging in activities such as utilizing public transportation where there is a lack of "communal" mask-wearing. The Appellant also takes issue with Dr. Tannenbaum's medical opinion allegedly differing from the medical opinion of doctors at [REDACTED] Hospital; however, no contradictory opinion from a treating physician has been offered into evidence.

The Facility has met its burden to show that the Appellant's health has improved sufficiently such that he no longer needs the services provided by the Facility, necessitating discharge in accordance with 10 NYCRR 415(i)(1)(i)(a)(2). While the Appellant's fears may be genuine, they are insufficient to rebut the totality of evidence demonstrating that the Appellant currently has no skilled nursing needs, is independent with ambulation and ADLs, and is medically safe for discharge from the Facility.

Alvan Bambury, Social Worker, testified that he explored several discharge options for the Appellant. He testified that the Appellant does not have an available home/apartment to return to in the community and that he has no family or friends with whom he can reside. Mr. Bambury testified that the proposed assisted living facility, [REDACTED], has accepted the Appellant but that the Appellant has declined to be discharged there. Mr. Bambury testified that he discussed other assisted living facilities with the Appellant, such as [REDACTED] and [REDACTED] but that the Appellant indicated that he would also not go to those facilities. Mr. Bambury further testified that the Appellant indicated that he would also not consider certain general areas to be discharged, such as [REDACTED], and would not consider a shelter placement.

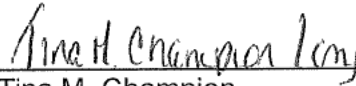
The Appellant has not offered any discharge location that he deems acceptable. He maintains instead that he should stay at the Facility. The Facility has shown that discharge is necessary. It has also shown that the proposed discharge location, [REDACTED], is available to the Appellant and is an appropriate placement for the Appellant given the Appellant's lack of skilled nursing needs, independence with ambulation and ADLs, and medical stability.

DECISION

The Riverside Premier Rehabilitation & Healing Center has established that its determination to discharge the Appellant was correct, and that its transfer location is appropriate.

1. The Riverside Premier Rehabilitation & Healing Center is authorized to discharge the Appellant in accordance with its [REDACTED], 2023 Notice of Discharge or Transfer.
2. This decision may be appealed to a court of competent jurisdiction pursuant to Article 78 of the New York Civil Practice Law and Rules.

DATED: Menands, New York
October 13, 2023



Tina M. Champion
Administrative Law Judge

TO: [REDACTED]
[REDACTED]
c/o The Riverside Premier Rehabilitation & Healing Center
150 Riverside Drive
New York, New York 10024
[REDACTED]

Allison Bellin, Director of Social Work
The Riverside Premier Rehabilitation & Healing Center
150 Riverside Drive
New York, New York 10024
abellin@theriversiderehab.com